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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

T. R.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

D044823

(San Diego County  
Super. Ct. No. J 512041C)

Proceedings in mandate after reference to a Welfare and Institutions Code section 366.26 hearing. Hideo Chino, Juvenile Court Referee. Petition denied.

T. R. (the mother) seeks review of juvenile court orders denying her reunification services and setting a hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> She

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

contends the court erred by not ordering reunification services for her under section 361.5, subdivision (b)(10). We deny the petition.

#### FACTUAL AND PROCEDURAL BACKGROUND

On March 19, 2004, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of infant Gracie M. under section 300, subdivision (b), alleging she was at risk because the mother used heroin, admitted using the drug during her pregnancy, had little prenatal care, and Gracie was born prematurely and suffering from methadone withdrawal symptoms. The petition also alleged under section 300, subdivision (g) that Gracie had been left without provision for support in that the mother and the alleged father were incarcerated. The social worker reported the mother was arrested in December 2003 and started using methadone while she was incarcerated because without it Gracie would have died in utero from the effects of drug withdrawal. She said the mother had been using heroin for 10 years and had not reunified with two other children, although she had been offered services.<sup>2</sup> The mother said she would like to participate in services after her release from prison and the social worker recommended providing them.

On March 22, 2004, the court detained Gracie. At the jurisdictional hearing on May 6, the mother submitted to jurisdiction under section 300, subdivision (b). The court found that allegation true, dismissed the allegation under section 300, subdivision (g) and

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<sup>2</sup> Two of Gracie's older brothers were placed at San Pasqual Academy. A third lived with his father and stepmother.

ordered the mother to participate in the Substance Abuse Recovery Management System (SARMS).

In an addendum report dated June 14, the social worker changed her recommendation and proposed no services be offered to the mother. She referred to the mother's long-term heroin use and inability to reunify with two other children. She also said the mother had not yet met with the social worker to discuss her case plan and had delayed scheduling an appointment with SARMS. The mother reported having medical problems after Gracie's birth that required her to stay in the hospital until May 14. She said she had called on June 7 to schedule an appointment with SARMS.

In a report dated August 5, 2004, the social worker changed her recommendation again to propose providing services because the mother had been making significant efforts. The mother was found to be an inappropriate candidate for SARMS because she could not stop using methadone quickly enough for that program, but her drug test showed the presence of no other drug except methadone.

Gracie's attorney requested the court take judicial notice of the files of Gracie's two older siblings, that showed services had been ordered and then terminated in 1998. Included in the information was a report from the previous social worker, stating she provided to the mother telephone numbers for two substance abuse treatment programs, and the mother's probation officer at that time had been unable to contact the mother and had ordered a warrant for her arrest.

At the disposition hearing on August 4, 2004, the mother testified she had a long history of heroin use, but would stop using methadone as soon as her doctors

recommended it and would do everything she could to prevent losing Gracie. She said she left one treatment program because it conflicted with visits with Gracie. She tried another, but it was inappropriate because she was using methadone, so she was going to go back to the first program. She testified her mother gave her other children to Child Protective Services when she was incarcerated and she never spoke with a social worker or received any referrals or reunification services. She said she had gone through detoxification about 10 times but it never worked. She testified she stopped using heroin about two weeks after learning she was pregnant with Gracie, and was given methadone because without it Gracie would have died. She agreed she had to make drug treatment and recovery her first priority.

The Agency's counsel and the mother's counsel argued in favor of providing reunification services. Gracie's counsel argued against providing services because they had been provided in the past and then terminated. She argued section 361.5, subdivision (b)(10) requires a court may not provide services in a factual situation of this kind unless it can find by clear and convincing evidence that reunification is in the child's best interests.

The court declared Gracie to be a dependent child of the juvenile court, removed custody from the parents, denied services and set a hearing under section 366.26.

The mother petitions for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 39.1B.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

## DISCUSSION

The mother contends the court abused its discretion by not ordering reunification services for her. She argues before a parent is denied services under section 361.5, subdivision (b)(10), the parent must have had a chance to reunify with a different child with the help of government resources. She claims she never actually received any services during the dependencies of her other children and the evidence showed that at that time she was not represented by counsel, she was incarcerated and was never produced for court hearings, and she was unaware she was offered services or that services had been terminated. She argues it is questionable whether section 361.5, subdivision (b)(10) even applies and, if it does, there was no evidence to support denial of reunification services.

In *In re Joshua M.* (1998) 66 Cal.App.4th 458, the court stated:

"Notwithstanding the crucial role of reunification services when a child is removed from the home [citation], the Legislature, by enacting section 361.5, subdivision (b), has discerned ' . . . it may be fruitless to provide reunification services under certain circumstances.' " (*Id.* at p. 467, quoting *In re Rebecca H.* (1991) 227 Cal.App.3d 825, 837.)

Section 361.5, subdivision (b)(10) provides reunification services need not be provided when the court finds by clear and convincing evidence:

"That the court ordered termination of reunification services for any siblings of the child because the parent or guardian failed to reunify with the sibling after the sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling of that child from that parent or guardian."

The proper standard of review to the mother's argument that section 361.5, subdivision (b)(10) does not apply to her case is the substantial evidence test. (See *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) Determinations of the credibility of witnesses and resolution of conflicts in the evidence are for the trier of fact. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Substantial evidence supports the court's finding that section 361.5, subdivision (b)(10) applies. It was for the court to weigh the evidence, determine credibility and resolve conflicts in the evidence. (*In re Tanis H., supra*, 59 Cal.App.4th at pp. 1226-1227.) The court took judicial notice of the minute orders in the earlier case involving the older siblings. Those children were removed from the mother because her drug addiction put them at risk. The minute orders indicate the mother was offered services in that case, she did not participate, services were terminated and the children were provided with permanent plans. The court also took judicial notice of a portion of the detention report from the earlier dependencies, where the social worker indicated she spoke with

the mother after the children were removed, the mother said she was staying with friends at the time, indicating she was not incarcerated, and the social worker stated she provided the mother with referrals for drug treatment. This evidence contrasted with the mother's testimony that she was in custody when the other children were removed and did not know about their removal until her mother told her months later, that she never spoke with a social worker and that she was never given referrals. The court was entitled to rely on the documents of which it had taken judicial notice.

The mother's drug addiction caused her to lose custody of two older children. She did not reunify with them and made little effort to treat the problem until six years later when Gracie was removed from her care. She testified she did not stop using heroin until about two weeks after she learned she was pregnant with Gracie. After she was released and accepted into a drug therapy program, she left the program so she could visit Gracie and, at the time of the hearing, said she was preparing to go back to that program. The court's determination the mother had not made reasonable efforts to treat the problem that led to the siblings' removal was supported by substantial evidence.

The mother's reliance on *In re Ricardo L.* (2003) 109 Cal.App.4th 552 does not aid her cause. There, the reviewing court ruled there was insufficient evidence to support jurisdiction, but it did not hold there must be evidence of the specific services provided in a previous dependency for a finding that section 361.5, subdivision (b)(10) applies.

Services should be limited to situations where there is a likelihood of success. (*In re Joshua M.*, *supra*, 66 Cal.App.4th at p. 467.) The mother had a long history of drug addiction and had lost custody of two older children. Although she testified she was

willing to make drug treatment and recovery her first priority, she left one drug treatment program after being there only two weeks because she wanted to visit Gracie. She was preparing to re-enter the program. The evidence does not show the court erred in finding that offering services to the mother and prolonging the dependency process would not serve Gracie's best interests. (See *In re Joshua M.*, *supra*, at p. 470.)

#### DISPOSITION

The petition is denied.

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BENKE, Acting P. J.

WE CONCUR:

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HUFFMAN, J.

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HALLER, J.